



The Public Service Commission State of South Carolina

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January 27, 2005

Certified Mail
Return Receipt Requested

Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
P. O. Box 944
Columbia, SC 29202

Nanette S. Edwards, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

Re: Application of Comtel Telecom Assets LP DBA VarTec Telecom, Clear Choice
Communications, Excel Telecommunications and VarTec Solutions
Commission Docket No. 2005-342-C

Dear Bonnie and Nanette:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-865 (C). As parties of record in this Comtel case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

F. David Butler
Hearing Examiner

FDB/dd
cc: Joseph Melchers, Chief Legal Advisor

RECEIVED

JAN 27 2006

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-342-C - ORDER NO. 2006-
JANUARY 27, 2006

IN RE:	Application of Comtel Telcom Assets LP	)	ORDER
	DBA VarTec Telecom, Clear Choice	)	GRANTING
	Communications, Excel Telecommunications	)	CERTIFICATE,
	and VarTec Solutions for a Certificate of	)	APPROVING MODIFIED
	Public Convenience and Necessity to Provide	)	ALTERNATIVE
	Interexchange and Local Exchange	)	REGULATION AND
	Telecommunications Services, for Flexible	)	FLEXIBLE
	Regulatory Treatment, Alternative	)	REGULATION, AND
	Regulation, and for Approval to Acquire	)	APPROVING
	Certain Assets of VarTec Telecom, Inc, Excel	)	ACQUISITION OF
	Telecommunications, Inc. and VarTec	)	ASSETS-PROPOSED
	Solutions, Inc.	)	ORDER OF THE
		)	HEARING EXAMINER

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Comtel Telcom Assets LP d/b/a VarTec Telecom, Clear Choice Communications, Excel Telecommunications and VarTec Solutions ("Comtel" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide interexchange and local exchange communications services within the State of South Carolina, and for approval of an acquisition of assets. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2004) and the general regulatory authority of the Commission. By its Application, Comtel also requests modified alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and

96-55 in Docket No. 95-661-C as modified by Order No. 2001-997, flexible regulation of its local service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and the waiver of certain Commission regulations.

The Commission's Docketing Department instructed Comtel to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Comtel and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Comtel complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A hearing was convened on January 9, 2006, at 11:30 a.m. at Garber Reporting Service, Columbia, South Carolina, before David Butler, Hearing Examiner. Comtel was represented by Bonnie D. Shealy, Esquire. The Office of Regulatory Staff (ORS) was represented by Nanette Edwards, Esquire and Lessie Hammonds, Esquire. Prior to the presentation of testimony, it was announced that Comtel and ORS had reached a settlement. The Settlement Agreement is attached hereto as Order Exhibit 1.

Jerry Ou, acting Chief Operations Officer of the Company, appeared and testified in support of the Application via videoconferencing. The record reveals that Comtel is a limited partnership organized in the State of Texas and has registered to transact business in South Carolina.

Comtel's services will be offered twenty-four hours per day, seven days a week. It does intend to employ sales agents. Mr. Ou explained the Company's request for authority, and the record further reveals the Company's services, operations, and

marketing procedures. Comtel seeks authority to operate as a reseller of intrastate interexchange telecommunications services to the public on a statewide basis and to offer a full range of “1+” interexchange telecommunications services on a resale basis. Specifically, Comtel seeks authority to provide MTS, out-WATS, in-WATS, and calling card services to both business and residential customers. In addition, Comtel seeks to provide resold and facilities-based local exchange services. Comtel has also petitioned the Commission for approval to complete the acquisition by it of certain assets of the VarTec Companies and to grant all relief requested to allow for the consummation of the transaction without undue delay. Mr. Ou states that Comtel will obtain its initial customer base through the transaction with the VarTec Companies.

Mr. Ou also discussed Comtel’s technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Ou offered that Comtel possesses sufficient financial resources to support its operations in South Carolina. Mr. Ou noted that, through the Bankruptcy Court-approved auction process, Comtel will acquire substantially all of the VarTec Companies’ assets. Upon consummation of the transaction, Comtel intends to finance working capital needs with a receivables-based line of credit of up to \$50 million.

With regard to management and technical capabilities, the Company has not been denied a license in any of the states in which it has applied, has had no licenses revoked in any jurisdictions, nor has it been the subject of any investigations by any governmental regulatory agencies. The Company’s Application and Mr. Ou’s testimony both evidence that Comtel’s management team has extensive experience in both marketing and

communications. Mr. Ou also testified that Comtel will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Ou offered that approval of Comtel's Application would serve the public interest by increasing the level of competition in South Carolina. Mr. Ou, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610 and to be allowed to keep the Company's books at its headquarters in Texas. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts (USOA). Comtel maintains its books in accordance with Generally Accepted Accounting Principles (GAAP). In addition, the Company requests that it not be required to publish local exchange directories, and therefore requests waiver of 26 S.C. Code Ann. Regs. 103-631.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Comtel is organized under the laws of the State of Texas as a limited liability partnership and is authorized to do business in the State of South Carolina by the Secretary of State.
2. Comtel has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.
3. Comtel desires to operate as a reseller of interexchange and local telecommunications services in South Carolina.

4. We find that Comtel possesses the managerial experience and capability to operate as a non-facilities based reseller of interexchange and local services in South Carolina.

5. We find, based on the financial records and balance sheets submitted, that Comtel possesses sufficient financial resources to provide the services as described in its Application.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to Comtel to operate as a reseller of interexchange and local telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of competition in South Carolina, and by increasing consumer awareness of options and services available, thereby encouraging growth and success of competitive services.

7. Comtel has no plans to maintain offices in South Carolina and requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Comtel's requested waiver reasonable and understands the difficulty presented to Comtel should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Additionally we find that a waiver of 26 S.C. Code Ann. Regs. 103-631 is reasonable and in the public interest.

8. Comtel has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2005).

9. The Commission finds that the Comtel's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280(B)(3) (Supp. 2005).

10. The Commission finds that the Comtel will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4) (Supp. 2005).

11. The Commission finds that services to be provided by Comtel will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2005).

12. The Commission finds that the provision of local exchange service by the Comtel "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2005).

13. The proposed acquisition of the assets of the VarTec Companies by Comtel should be approved.

CONCLUSIONS OF LAW

1. The Commission concludes that Comtel possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that Comtel will participate in the support of universally available telephone service at affordable rates to the extent that Comtel may be required to do so by the Commission.

3. The Commission concludes that Comtel will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Comtel's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Comtel will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by Comtel and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Comtel to provide intrastate interexchange and local telecommunications services.

8. The Commission adopts a rate design for Comtel for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for

adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Comtel shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. Comtel shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2005).

10. The Commission concludes that Comtel's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to

those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

11. The Commission concludes the Comtel’s local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Comtel’s competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels

that will have been previously approved by the Commission. Further, the Comtel's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

12. We conclude that Comtel's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on Comtel. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waiver of 26 S.C. Code Ann. Regs. 103-631 which requires publication of a local telephone directory.

13. The acquisition of the assets of the VarTec companies should be approved.

14. The Settlement Agreement between the parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Comtel to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide local telecommunications services within the State of South Carolina.

2. Comtel's rate designs for its products shall comport to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, Comtel shall file its revised tariff and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the Settlement Agreement and the revised tariffs filed as a hearing exhibit.

4. Comtel is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Comtel's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. Comtel shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Comtel changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, Comtel shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to

the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Comtel shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. Comtel shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Comtel shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.sc.gov/reference/forms.asp. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at <http://www.regulatorystaff.sc.gov/>, and the appropriate form is entitled "Gross Receipts Form."

9. Comtel shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Comtel shall provide to the Commission and ORS in writing the name of the

authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Comtel shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.sc.gov/reference/forms.asp; this form shall be utilized for the provision of this information to the Commission and ORS. Further, Comtel shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. Comtel is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, Comtel requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2005), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that Comtel’s principal headquarters will be located outside of South Carolina. Comtel requests permission to maintain its books and records at its headquarters in its home office. The Commission finds Comtel’s requested waiver reasonable and understands the difficulty presented to Comtel should the waiver not be granted. The Commission therefore grants the requested waiver that Comtel be allowed to maintain its books and records at its principal headquarters. However, Comtel shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and Comtel shall promptly notify the Commission and ORS if the location of its books and records changes.

12. Comtel also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Comtel maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Accordingly, Comtel requests an exemption from the USOA requirements and the applicable regulation. We grant the Comtel's request for the reasons stated above. We also grant the Comtel's request to waive 26 S.C. Code Ann. Regs. 103-631, because of the unusual difficulty that Comtel would have in complying with these regulations.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15th** with the Commission and ORS.

14. Comtel is further required to comply with, in accordance with its Application and under Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911" system or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Comtel to contact the appropriate

authorities regarding 911 service in the counties and cities where the company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order an prior to providing local telephone services in South Carolina, Comtel shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

15. The Settlement Agreement between the parties is hereby approved.

16. The proposed acquisition of the assets of the VarTec Companies is approved.

17. This Order shall remain in full force and effect until further notice by this Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)